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Attorneys for Rose Gindel Revocable Trust Agreement

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

The Rose Gindel Revocable Trust Agreement (the "Gindel Trust"), hereby objects to the Notice of Trustee's Determination of Claim dated May 10, 2010 ("Determination Letter"), attached hereto as Exhibit A, as described herein.

BACKGROUND

1. In or about July 2008, Rose Gindel opened an account (Account No. 1-G0397-3 and 1-G0397-4) with Bernard L. Madoff Investment Securities LLC ("Madoff") in the name of Rose Gindel Revocable Trust Agreement (the "Gindel Trust Account").¹ The Gindel Trust is a "customer" of Madoff, as defined by the Securities Investor Protection Act ("SIPA").

¹ All personal information relating to the Gindel Trust Account has been redacted for security reasons.

2. From the creation of the Gindel Trust Account, Ms. Gindel and/or the trustee of the Gindel Trust received regular communications from Madoff, including monthly statements, trade confirmations, and quarterly portfolio management reports.

3. The final Madoff statement dated November 30, 2008 (the “Final Madoff Statement”) for the Gindel Trust Account shows that the Gindel Trust owned securities with a market value of \$8,296,498.87 in the Gindel Trust Account. A copy of the Final Madoff Statement is annexed to the Gindel Customer Claim (defined below).

4. On December 11, 2008, an action was commenced against Madoff by the Securities & Exchange Commission in the United States District Court for the Southern District of New York. On December 15, 2008, this liquidation proceeding was commenced pursuant to the SIPA. *See* Order, Securities and Exchange Commission v. Madoff, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee (“Trustee”), charged, *inter alia*, with overseeing the liquidation of Madoff and processing customer claims for money pursuant to SIPA. *Id.*; 15 U.S.C. § 78fff-1(a).

5. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to Madoff customers and setting forth claim-filing deadlines. *See* Order [Dkt. No. 12].

6. The December 23, 2008 Order further provided that, to the extent the Madoff Trustee disagrees with the amount set forth on a customer claim form, the Madoff Trustee “shall notify such claimant by mail of their determination that the claim is disallowed, in whole or in part, **and the reason therefor** . . .” *See* Order at 6 (emphasis added) [Dkt. No. 12].

7. On or about June 18, 2009, the Gindel Trust timely filed a claim for the Gindel Trust Account for securities (the “Gindel Customer Claim”) based on the November 30, 2008

Final Madoff Statement in the amount of \$8,296,498.87. A copy of the Gindel Customer Claim with the Final Madoff Statement is attached hereto as Exhibit B.

8. On May 10, 2010, the Trustee sent the Gindel Trust the Determination Letter rejecting the Gindel Customer Claim and stating that the Gindel Trust is not entitled to a payment because (a) no securities were purchased for the Gindel Trust Account and (b) the Gindel Trust Account does not have a positive net equity because the same amount of funds deposited into the account were withdrawn from the account.

GROUND FOR OBJECTION

I. The Determination Letter Fails To Comply With The Court's Order.

9. The Determination Letter fails to comply with this Court's December 23, 2008 Order, which directs the Trustee to satisfy customer claims in accordance "with the Debtor's books and records." Dec. 23, 2008 Order at 5 [Dkt. No. 12]. The Gindel Trust Customer Claim was evidenced by the Final Madoff Statement showing a value of \$8,296,498.87 and listing the securities purportedly purchased for the account, which reflects the "Debtor's books and records" and by which the Trustee is bound absent proof that the owner of the Gindel Trust Account did not have a "legitimate expectation" that the balance on the Final Madoff Statement, confirmations, credit advices and portfolio management report represented her property.

II. The Trustee Does Not Set Forth the Legal Basis for Disallowing the Claim in Full.

10. The Trustee failed to set forth a legal basis for the position he has taken for the calculation of the claim. *See* Determination Letter. The Determination Letter:

(a) does not clearly provide "the reason" for the disallowance, as required by the Court's December 23, 2008 Order, *see* Order [Dkt. No. 12];

(b) is insufficient to rebut the prima facie validity of the Gindel Trust Customer Claim as provided in Section 502(a) of the Bankruptcy Code and Fed. R. Bankr. P. 3001(f);

(c) violates general principles of applicable law requiring that an objection to a proof of claim set forth, at a minimum, the relevant facts and legal theories upon which the objection is based, *see, e.g.*, Collier on Bankruptcy ¶ 3007.01(3) (15th ed.) (“an objection to a claim should . . . meet the [pleading] standards of an answer”); *In re Enron Corp.*, No. 01-16034, 2003 Bankr. LEXIS 2261, at *25 (Bankr. S.D.N.Y. Jan. 13, 2003) (same); and

(d) includes an exhibit, which purportedly calculates the money deposited less subsequent withdrawals without any supporting documentation, that is completely unsubstantiated and incorrect. To the extent that the Trustee’s “reconciliation” differs from the Gindel Trust Customer Claim and or the account from which the initial deposit was transferred, the Trustee should produce evidence supporting his “reconciliation.”

III. The Trustee Has Failed to Honor Customer Expectation.

11. The Trustee has failed to fulfill the requirement that he honor the legitimate expectations of a customer.

12. The legislative history of SIPA makes clear that Congress’ intent in enacting the legislation was to protect the legitimate expectations of customers. Congressman Robert Eckhardt, (D) Texas, sponsor of amendments to SIPA to increase the amount of advance available to customers and expedite the process, commented on the purpose of the legislation as follows:

Under present law, because securities belonging to customers may have been lost, improperly hypothecated, misappropriated, *never purchased* or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which they maintained in their brokerage account . . .

By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy the customers' legitimate expectations . . .

S. Rep. No. 95-763, at 2 (1978) (*emphasis added*).

A customer generally expects to receive *what he believes* is in his account at the time the stockbroker ceases business. But because securities may have been lost, improperly hypothecated, misappropriated, *never purchased*, or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which they maintained in their brokerage account . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy customers' legitimate expectations . . .

S. Rep. No. 95-763, at 2 (1978) (*emphasis added*).

13. The Securities Investor Protection Corporation ("SIPC"), charged with administering SIPA, acknowledged that it was bound by the statute and the rules to satisfy the reasonable expectations of customers even when the securities had never been purchased, in the brief it submitted to the Court of Appeals for the Second Circuit as follows:

Reasonable and legitimate expectations on the filing date are controlling even where inconsistent with transaction reality. Thus, for example, where a claimant orders a securities purchase and receives a written confirmation statement reflecting that purchase, the claimant generally has a reasonable expectation that he or she holds the securities identified in the confirmation and therefore generally is entitled to recover those securities (within the limits of SIPA) even where the purchase never actually occurred and the debtor instead converted the cash deposited by the claimant to fund that purchase . . . [T]his emphasis on the reasonable and legitimate customer expectations frequently yields much greater customer protection than would be the case if the transaction reality, not the claimants expectations, were controlling, as this court's earlier opinion in this liquidation well illustrates.

Brief of the Appellant SIPC at 23-24.

14. Based on regular statements, confirmation reports and other communications received from Madoff, the owner of the Gindel Trust at all times reasonably believed and expected that Madoff executed such transactions and that the Gindel Trust Account actually held such securities.

15. The Trustee's position in the Madoff case is completely inconsistent with the purpose and goals of SIPA and the position that SIPC has taken unequivocally with respect to the treatment of customers in accordance with their reasonable expectations reflected in the communications from the broker-dealer.

IV. The Trustee's Definition of "Net Equity" is Inconsistent With SIPA and SIPA Rules, Practice and Pronouncement and Case Law Interpreting the Statute and Rules.

16. The Trustee failed to set forth a legal basis for the position he has taken that he can reduce the amount of the claim by appreciation in the Gindel Trust Account, the prior Madoff account or calculate the claim by counting only investment principal less withdrawals without regard to the securities reflected in the Final Madoff Statement. No legal basis for the method exists. The Trustee's calculation violates SIPA.

17. 15 U.S.C. § 78fff-2(b) provides that a customer's claim shall be allowed in the amount of the customer's "net equity." 15 U.S.C. § 78fff-2(b). The Trustee calculates "net equity" by reducing the principal contributed to the account less any withdrawals or appreciation, without regard to any gains reflected in the Final Madoff Statement and any prior statement delivered by Madoff to the customer. This is incorrect for the following reasons:

(a) The Trustee's method of calculating the customer claim is inconsistent with the language of the statute. SIPA defines a customer's net equity claim as the value of the customer's "securities positions" in the customer's account, less any amount the customer owes the debtor, as of the date of the filing of the SIPA liquidation:

The term ‘net equity’ means the dollar amount of the account or accounts of a customer, to be determined by –

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer . . . ; minus

(B) any indebtedness of such customer to the debtor on the filing date . . .²

15 U.S.C. § 78lll(11). The Trustee’s proposed formulation has no support in the language of the statute or interpreting case law and in fact, adds words and concepts to the statute which do not exist.

(b) The Trustee’s method is inconsistent with the Rules promulgated under SIPA. The Series 500 Rules promulgated under SIPA by SIPC provide for the classification of claims for cash or securities in accordance with the written transaction confirmations sent by the broker-dealer to the customer. 17 C.F.R. § 300.500. Pursuant to the Rule, a customer has a claim for securities if the customer has received written confirmation that the securities have been purchased or sold for the account.

(c) The Trustee’s method is inconsistent with the legislative history of the statute. SIPA’s legislative history emphasizes Congress’ intention that the statute protect customer expectations by ensuring that customers of retail brokerage firms can rely on their account statements. The Madoff statements and confirmations sent to Mrs. Gindel indicated that the Gindel Trust owned a list of blue chip securities. It makes no difference whether the securities were ever actually purchased.

² The “indebtedness” of the customer to the debtor refers to cash or securities owed to the debtor, which is most often in the context of a customer having borrowed from the debtor on margin. *See, e.g.*, H.R. Rep. No. 95-746 at 21 (1977) (describing customers owing cash or securities to the stockbroker as “margin customers”); *Rich v. NYSE*, 522 F.2d 153, 156 (2d Cir. 1975) (noting that, under the 1970 statutory regime, when there were shortages in available securities to satisfy “net equity” claims, customers received cash for their securities “less, in the case of holders of margin accounts, amounts owed” to the broker); *In re First St. Sec. Corp.*, 34 B.R. 492, 497 (Bankr. S.D. Fla. 1983) (offsetting against claim amount of indebtedness customer owed to the debtor where unauthorized stock purchase was funded in part by borrowing on margin).

(d) The Trustee's formula is an improper and wholly inadequate measure of loss. Mrs. Gindel deposited funds with Madoff with the expectation the amount would grow—the Gindel Trust Account statements showed such growth, and the balance on the Final Madoff Statement reflects the benefit of this bargain. In *Visconsi v. Lehman Brothers, Inc.*, No. 06-3304, 244 Fed. Appx. 708, 713-14 (6th Cir. 2007), the Court declined to set aside an arbitration award that appeared to apply an expectancy measure of damages against a successor in a Ponzi scheme case and rejected the money in / money out formula as not reflecting the expectations of the parties. *Id.* The Court explained:

Lehman's out-of-pocket theory misapprehends the harm suffered by Plaintiffs and the facts of this case. Plaintiffs gave \$21 million to Gruttadauria, not to hide under a rock or lock in a safe, but for the express purpose of investment, with a hope – indeed a reasonable expectation – that it would grow. Thus, the out-of-pocket theory, which seeks to restore to Plaintiffs only the \$21 million they originally invested less their subsequent withdrawals, is a wholly inadequate measure of damages. Had Gruttadauria invested Plaintiffs' money as requested, their funds would have likely grown immensely, especially considering that Plaintiffs invested primarily throughout the mid-1990s, which, had they hired an honest broker . . . , would have placed their money in the stock market during one of the strongest bull markets in recent memory. In fact, the fictitious statements issued by Lehman, which were designed to track Plaintiffs' funds as if they had been properly invested, indicate that Plaintiffs' accounts would have grown to more than \$37.9 million (even accounting for the withdrawal of more than \$31.3 million). Plaintiffs thus could have reasonably believed that they were entitled to the full \$37.9 million balance shown, regardless of the amounts of their previous deposits and withdrawals.

Id. This applies precisely to the Gindel Trust Customer Claim.

(e) The Trustee's Determination Letter is contrary to SIPC's own policies and practices, as reflected in the sworn testimony of Stephen Harbeck, SIPC's president and CEO, and its actions in similar liquidation proceedings. For example, in the New Times Securities Services, Inc. ("New Times") SIPA liquidation, in the context of discussing claims

filing deadlines, Harbeck acknowledged that if broker-dealer customers have been led to believe that “real existing” securities had been purchased for their accounts, then those customers are entitled to the full value of their securities positions as of the filing date, even if that value represents a substantial increase from the purported purchase price of the securities and even if the securities had never been purchased. Harbeck testified as follows:

Harbeck: [I]f you file within sixty days, you’ll get the securities, without question. Whether – if they triple in value, you’ll get the securities . . . Even if they’re not there.

Court: Even if they’re not there.

Harbeck: Correct.

Court: In other words, if the money was diverted, converted –

Harbeck: And the securities were never purchased.

Court: Okay.

Harbeck: And if those positions triple, we will gladly give the people their securities positions.

Transcript at 37-39, *In re New Times Sec. Servs., Inc.*, No. 00-8178 (Bankr. E.D.N.Y. July 28, 2000).

Moreover, SIPC faced very similar circumstances in the New Times liquidation and took a very different position than it is taking in the Madoff case in support of the Trustee. There, the New Times Trustee’s position on “net equity” was in full accord with SIPA, and thus directly contrary to the Trustee’s position in this case. Specifically, with respect to any claims that were based on confirmations and account statements reflecting securities positions in “real” securities that could have been purchased (i.e., securities that actually existed on the public market and whose valuations were objectively and publicly verifiable by the customers), the New Times Trustee allowed all such net equity claims to the full extent of the filing date valuations of those

securities, even though none of the securities identified in those records had ever, in fact, been purchased by the broker-dealer.³

(f) The Trustee's determination is inconsistent with the case law. The Second Circuit's discussion of SIPC's claims processing in *New Times*, the only case in this jurisdiction dealing with the issue in the Madoff case, further indicates that, with respect to customers who thought they were invested in listed securities, SIPC properly paid customer claims based on the customers' final account statements, even where the securities had never been purchased:

Meanwhile, investors who were misled . . . to believe that they were investing in mutual funds that in reality existed were treated much more favorably. Although they were not actually invested in those real funds – because Goren never executed the transactions – the information that these claimants received on their account statements mirrored what would have happened had the given transaction been executed. As a result, the Trustee deemed those customers' claims to be "securities claims" eligible to receive up to \$500,000 in SIPC advances. The Trustee indicates that this disparate treatment was justified because he could purchase real, existing securities to satisfy such securities claims. Furthermore, the Trustee notes that, if they were checking on their mutual funds, the "securities claimants," . . . could have confirmed the existence of those funds and tracked the funds' performance against Goren's account statements.

³ As with Madoff Securities and Bernard Madoff, *New Times* and its principal, William Goren, defrauded scores of investors by providing them with confirmations and account statements reflecting purported securities investments made on their behalf when, in fact, no such investments had been made and their money had, instead, been misappropriated for other purposes. Two of the investment opportunities Goren purported to offer were: (1) money-market funds that were entirely fictitious (the "Fictitious New Age Funds"); and (2) mutual funds that were entirely real, such as those offered by The Vanguard Group and Putnam Investments (the "Real Securities"). *See In re New Times Sec. Servs., Inc.*, 371 F.3d 68, 71-72 (2d Cir. 2004) ("*New Times I*"). Goren's was "a classic Ponzi scheme," *id.* at 72 n.2, wherein new investors' money was used to pay earlier investors.

Approximately 900 customers filed claims in the *New Times* liquidation: 726 for whom the "Real Securities" were purportedly purchased; 174 for whom the "Fictitious New Age Funds" were purportedly purchased. Consistent with SIPA and its legislative history, the *New Times* Trustee appropriately applied SIPA's net equity definition to the "Real Securities" customers' claims – meaning he paid them according to the full value of those securities positions as of the date of the liquidation filing. When challenged by "Fictitious New Age Funds" customers who had objected that they had not received the same treatment, SIPC and the *New Times* Trustee (with the apparent concurrence of the SEC) vigorously defended their approach in court.

In re New Times Sec. Servs., 371 F.3d 68, 74 (2d Cir. 2004); *see also* Brief of Appellant SIPC at 23-24, *In re New Times Sec. Servs., Inc.*, No. 05-5527 (Dec. 30, 2005):

[R]easonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transactional reality. Thus, for example, where a claimant orders a securities purchase and receives a written confirmation statement reflecting that purchase, the claimant generally has a reasonable expectation that he or she holds the securities identified in the confirmation and therefore generally is entitled to recover those securities (within the limits imposed by SIPA), even where the purchase never actually occurred and the debtor instead converted the cash deposited by the claimant to fund that purchase . . . [T]his emphasis on reasonable and legitimate claimant expectations frequently yields much greater ‘customer’ protection than would be the case if transactional reality, not claimant expectations, were controlling, as this Court’s earlier opinion in this liquidation well illustrates.

The Gindel Trust is in the same position as those investors in the *New Times* case who received confirmations and statements reflecting real securities.

(g) The Trustee’s position in the Madoff case is contradicted, not only by SIPC’s prior treatment of customers in the *New Times* case, but also by a statement that SIPC’s general counsel, Josephine Wang, gave to the press on December 16, 2008 wherein Ms. Wang acknowledged that a Madoff customer is entitled to the securities in their account:

Based on a conversation with the SIPC general counsel, Josephine Wang, if clients were presented statements and had reason to believe that the securities were in fact owned, the SIPC will be required to buy these securities in the open market to make the customer whole up to \$500K each. So if Madoff client number 1234 was given a statement showing they owned 1000 GOOG shares, even if a transaction never took place, the SIPC has to buy and replace the 1000 GOOG shares.

December 16, 2008 Insiders’ Blog, www.occ.treas.gov/ftp/alert/2008-37.html.

(h) The Trustee’s methodology also conflicts with other federal laws. For example, Rev. Proc. 2009-20, issued by Commissioner Shulman on March 17, 2009, expressly

recognizes the income earned by customers, on which they paid taxes annually. Yet the Trustee's position is that the income earned by customers on their investments is not their money. In addition, some customers were required to take distribution from their retirement accounts. Yet the Trustee is deducting from their customer claim the mandatory withdrawals that the customers were required by law to take.

18. In sum, the Trustee has created his own definition of "net equity" that is not based on statutes, prior practice or case law. The procedure is designed not for the benefit of Madoff victims but rather so that the Trustee can avoid paying SIPC insurance to the thousands of Madoff investors who, like Mrs. Gindel, have depended upon their Madoff investments for their current and future living expenses.

19. Because of his refusal to comply with SIPA's mandate that he "promptly" satisfy customer claims based on their last statements, 15 U.S.C. § 78fff- 3(a) and 4(c), the Trustee employs a vast team of forensic accountants to pore through decades of records to determine each customer's net investment before SIPC pays any amount to a customer. Clearly, this is inconsistent with the statutory scheme and the legislative intent. The "securities position" of the Gindel Trust is readily ascertainable from the Final Madoff Statement.

V. The Trustee Has No Legal Basis For Reducing The Claim.

20. The Trustee's action in reducing the amount shown on the Gindel Trust Customer Claim by (a) any prior gains or withdrawals reflected on the Final Madoff Statement or prior statements and (b) any prior gains or withdrawals from the transfer account is an attempt to avoid such gains without alleging any grounds for avoidance or proving that such gains are avoidable under the Bankruptcy Code's avoidance provisions. Any such disallowance is improper and unjustified, and the Determination Letter should be stricken on that ground alone. *See Fed. R. Bankr. P. 7001(1) & 7008.*

VI. The Trustee's Reductions Are Barred By The Statue Of Limitations.

21. The Trustee's action in reducing the amount shown on the Gindel Trust Customer Claim by gains or withdrawals from the account and any prior BMIS account from which funds were transferred is an attempt to avoid such gains and withdrawals without alleging any grounds for avoidance or proving that such gains are avoidable under the state law avoidance provisions or other theories of law. The avoidance of those gains and withdrawals have been taken well beyond any limitations period for avoidance of a claim under either state or federal law.

VII. The Trustee's Denial Is Inconsistent With SIPA.

22. SIPA provides that (a) SIPC shall pay the first \$500,000 of each customer claim, and (b) customers have an unsecured claim against customer property for the balance of their claims which is paid pro rata with other customers. *See* 15 U.S.C. § 78fff-3(a) ("In order to provide for prompt payment and satisfaction of net equity claims of customers of debtor, SIPC shall advance to the trustee [up to] \$500,000 for each customer, as may be required to pay . . . claims."); 15 U.S.C. § 78fff-2(c)(1)(B) (providing that customers of the debtor "shall share ratably in . . . customer property on the basis and to the extent of their net equities"). As evidenced by the Gindel Trust Customer Claim, the Gindel Trust has a valid claim in the amount of \$8,296,498.87. Therefore, the Gindel Trust is entitled to an advance of \$500,000 and a claim against customer property for the remainder.

VIII. The Gindel Trust Entitled To Interest On The Investments.

23. In the event that the Court should determine that customer claims should not be allowed in the amount of the Final Madoff Statement, then in the alternative, the Gindel Trust is entitled to recover interest or appreciation on Mrs. Gindel's investments based upon the following.

(i) Under New York law, which is applicable here, funds deposited with the Debtors under these circumstances are entitled to interest. *See, e.g.*, N.Y. C.P.L.R. § 5004; N.Y. Gen. Oblig. § 5-501, *et seq.* Accordingly, the Gindel Customer Claim should be recalculated by adding interest to all funds deposited.

(j) Under New York law, which is applicable here, customers are entitled to any returns Madoff earned on the deposited funds under principles of unjust enrichment. Accordingly, customer claims should be recalculated by adding the amounts earned by Madoff on the customer's deposits. *See, e.g., Steinberg v. Sherman*, No. 07-1001, 2008 U.S. Dist. LEXIS 35786, at *14-15 (S.D.N.Y. May 2, 2008) ("Causes of action such as . . . conversion and unjust enrichment qualify for the recovery of prejudgment interest."); *Eighteen Holding Corp. v. Drizin*, 701 N.Y.S.2d 427, 428 (1st Dep't 2000) (awarding prejudgment interest on claims for unjust enrichment and conversion).

(k) The Gindel Trust is entitled to interest on its investment under federal securities laws. In *Randall v. Loftsgaarden*, 478 U.S. 647 (1986), the Supreme Court analyzed the different measures of recovery of "actual damages" for fraud, primarily including rescission and restitution. The *Randall* Court concluded that Congress intended to deter wrongdoers, and hence, that wide latitude in choosing the measure of damages was warranted. *See id.* at 664 (citing *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151, 92 S.Ct. 1456, 31 L.Ed.2d 741 (1972)). The *Randall* Court continued by holding that:

This deterrent purpose is ill-served by a too rigid insistence on limiting plaintiffs to recovery of their "net economic loss."

Id. at 664 (citing *Salcer v. Envicon Equities Corp.*, 744 F.2d 935, 940 (2d Cir. 1984)).

RESERVATION OF RIGHTS

24. The Gindel Trust reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of the Gindel Trust's right to object on any additional grounds.

25. The Gindel Trust reserves all rights set forth in Rule 9014, including, without limitation, rights of discovery. *See* Fed. R. Bankr. P. 9014.

26. The Gindel Trust reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

27. The Gindel Trust incorporates by reference all reservations of rights set forth in the Gindel Customer Claim.

RELIEF REQUESTED

For the reasons stated herein, the Gindel Trust Customer Claim should be allowed in its entirety in the amount of \$8,296,498.87, which is the amount stated on the Final Madoff Statement, plus interest from the date of the Determination Letter.

For the reasons stated herein, this Court should direct SIPC to immediately replace \$500,000 of the securities in the Gindel Trust Account based upon the values reflected on the Final Madoff Statement and/or provide the Gindel Trust with a \$500,000 SIPC advance.

For the reasons stated herein, the Determination Letter should be stricken.

The Gindel Trust requests such other relief as may be just and equitable.

Dated: June 8, 2010

SONNENSCHN NATH & ROSENTHAL LLP

By: /s/ Carole Neville
Carole Neville
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New York, New York 10020
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Attorneys for Rose Gindel Revocable Trust Agreement

CERTIFICATE OF SERVICE

I, Carole Neville, hereby certify that on June 8, 2010 I caused a true and correct copy of the foregoing **Objection to Trustee's Determination of Claim** on behalf of Rose Gindel Revocable Trust Agreement to be filed electronically with the Court and served upon the parties in this action who receive electronic service through CM/ECF, and served by hand upon:

David J. Sheehan, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111

Dated: June 8, 2010

/s/ Carole Neville
Carole Neville

EXHIBIT A

(Determination Letter)

COPY

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

May 10, 2010

Rose Gindal Revocable Trust Agreement

REDACTED

Dear Rose Gindal Revocable Trust Agreement:

PLEASE READ THIS NOTICE CAREFULLY.

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1G0397 designated as Claim Number 010208:

Your claim for securities is **DENIED**. No securities were ever purchased for your account.

Further, based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$0.00), as more fully set forth in Table 1 annexed hereto and made a part hereof,

¹ Section 78III(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78III(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

is the same as the amount that was deposited with BLMIS for the purchase of securities (total of \$0.00). As noted, no securities were ever purchased by BLMIS for your account. Any and all profits reported to you by BLMIS on account statements were fictitious.

As reflected in Table 1, certain of the transfers into or out of your account have been adjusted. As part of the Trustee's analysis of accounts, the Trustee has assessed accounts based on a money in/money out analysis (i.e., has the investor deposited more or less than he or she withdrew from BLMIS). This analysis allows the Trustee to determine which part of an account's balance is originally invested principal and which part is fictitious gains that were fabricated by BLMIS. A customer's allowed claim is based on the amount of principal in the customer's account.

Whenever a customer requested a transfer from one account to another, the Trustee analyzed whether the transferor account had principal in the account at the time of the transfer. The available principal in the account was transferred to and credited in the transferee account. Thus, the reason that the adjusted amount of transferred deposits or withdrawals in Table 1 is less than the purported transfer amount is that the transferor account did not have sufficient principal available to effectuate the full transfer. The difference between the purported transfer amount and the adjusted transfer amount is the amount of fictitious gain that was transferred to or from your account. Under the money in/money out analysis, the Trustee does not give credit for fictitious gains in settling your allowed claim.

Since there were no funds actually deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Therefore, your claim is **DENIED** in its entirety.

On March 1, 2010, the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) issued a decision which affirmed the Trustee's Net Investment Method for determining customer claims. The final resolution of this issue is expected to be determined on appeal.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim re-determined in accordance with any such Court order.

Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by the Trustee against you.

PLEASE TAKE NOTICE: If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching

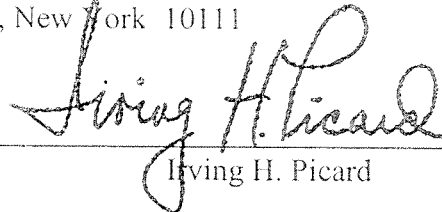
copies of any documents in support of your position, with the United States Bankruptcy Court and the Trustee within **THIRTY DAYS** after May 10, 2010, the date on which the Trustee mailed this notice.

PLEASE TAKE FURTHER NOTICE: If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

PLEASE TAKE FURTHER NOTICE: You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for
the Southern District of New York
One Bowling Green
New York, New York 10004
and
Irving H. Picard, Trustee
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111



Irving H. Picard

Trustee for the Liquidation of the Business of
Bernard L. Madoff Investment Securities LLC

cc: Carole Neville, Esq.
Sonnenschein Nath & Rosenthal LLP
1221 Avenue of the Americas
New York, New York 10020

- Table 1 -			
DEPOSITS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
7/15/2008	TRANS FROM 1CM22330	\$8,000,000.00	\$0.00
Total Deposits:		\$8,000,000.00	\$0.00
WITHDRAWALS			
Total Withdrawals:		\$0.00	\$0.00
Total deposits less withdrawals:		\$8,000,000.00	\$0.00

EXHIBIT B

(Final Madoff Statement)

COPY

CUSTOMER CLAIM

Claim Number _____

Date Received _____

RECEIVED

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

JUN 18 2009

In Liquidation

DECEMBER 11, 2008

Irving H. Picard, Esq.
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

Provide your office and home telephone no.

OFFICE: (212) 768-6889

HOME: _____

Taxpayer I.D. Number (Social Security No.)

1G0397

ROSE GINDEL REVOCABLE TST AGMT

REDACTED

(If incorrect, please change)

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of December 11, 2008:
- a. The Broker owes me a Credit (Cr.) Balance of \$ _____
 - b. I owe the Broker a Debit (Dr.) Balance of \$ _____

- d. If balance is zero, insert "None."

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

a. The Broker owes me securities

b. I owe the Broker securities

c. If yes to either, please list below:

Date of Transaction (trade date)

Name of Security

SEE STATEMENT DATED NOVEMBER 30, 2008

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or

information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

- | | | <u>YES</u> | <u>NO</u> |
|----|--|------------|-----------|
| 3. | Has there been any change in your account since December 11, 2008? If so, please explain. | _____ | _____✓ |
| 4. | Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker? | _____ | _____✓ |
| 5. | Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker? | _____ | _____✓ |
| 6. | Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s) | _____ | _____✓ |
| 7. | Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming. | _____ | _____✓ |
| 8. | Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers. | _____ | _____✓ |

9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker. _____

Please list the full name and address of anyone assisting you in the preparation of this claim form: _____

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Date 6/17/09 Signature Rose G. Feldman
Date _____ Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

ADDENDUM

Customer: Rose Gindel Revocable TST AGMT

Address: 3
1

Account #: 1-G0397-3
1-G0397-4

REDACTED

November 30, 2008 Statement -- Closing balance net equity \$8,296,498.87

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York & London

ROSE JINDEL REVOCABLE
TRUST AGREEMENT

885 Third Avenue
New York, NY 10022
(212) 230-2121
800 334-1313
FAX (212) 638-1101

Madoff Securities International Ltd.

17 Beekman St.
New York, New York 10038
(212) 333-3333

REDACTED

YOUR ACCOUNT NUMBER IS
1-00377-5-0

PERIOD ENDING
11/30/03
PAID
1

YOUR ACCOUNT INFORMATION SYSTEM

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDIT TO YOUR AC
11/12	4,6628		3682	BALANCE FORWARD	55.830	258,556.24	
11/12	3,026		4184	KAL-MART STORES INC	67.270	204,200.02	
11/12	11,214		6008	INTERNATIONAL BUSINESS MACHS	72.600	817,724.32	
11/12	12,702		6510	EXXON MOBIL CORP	14.710	178,702.82	
11/12	5,674		12836	INTEL CORP	29.560	150,205.92	
11/12	8,010		17161	JOHNSON & JOHNSON	38.530	308,945.30	
11/12	4,212		21487	J.P. MORGAN CHASE & CO	44.050	190,957.52	
11/12	2,492		25813	MCDONALDS CORP	55.370	138,081.04	
11/12	4,628		30139	MERCK & CO	48.560	132,314.40	
11/12	16,910		34465	MICROSOFT CORP	21.810	369,483.10	
11/12	8,544		36791	ORACLE CORPORATION	17.300	148,152.20	
11/12	3,582		51769	PEPSICO INC	26.410	190,913.62	
11/12	1,928		52271	APPLE INC	100.780	197,405.24	
11/12	14,418		56095	Pfizer Inc	10.940	144,816.52	
11/12	3,382		55997	ABBOTT LABORATORIES	54.510	185,825.02	
11/12	5,408		50421	PROCTER & GAMBLE CO	64.080	110,860.64	
11/12	2,314		50923	ANGEN INC	59.150	136,588.24	
11/12	4,450		64747	PHILLIP MORRIS INTERNATIONAL	43.000	194,193.00	
11/12	10,030		55249	BANK OF AMERICA	21.590	231,003.20	
11/12	3,500		69073	QUALCOMM INC	32.770	120,363.20	
11/12	11,570		69575	CITI GROUP INC	12.510	145,202.70	
11/12	1,670		73399	SCHLUMBERGER LTD	49.430	132,217.60	
11/12	6,906		73901	COMCAST CORP	10.510	109,052.65	
11/12				CL A			

CONTINUED ON PAGE 2

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

BERNARD L. MADOFF
MADOFF INVESTMENT SECURITIES LLC
 New York London

ROSE GINDEL REVOCABLE
TRUST AGREEMENT

385 Third Avenue
 New York, NY 10022
 (212) 230-2424
 800 334-1313
 Fax (212) 838-4061

ARJUND KUMAR
 Madoff Securities International Limited
 12 Berkeley Street
 Mayfair, London W.1J 8JF
 Tel: (020) 7493 6222

REDACTED

YOUR ACCOUNT NUMBER
 1-60397-3-0

PERIOD ENDING
 11/30/08

PAGE
 2

YOUR TAX IDENTIFICATION NUMBER

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12	12,638		77725	AT&T INC	27	341,731.00	
11/12	3,204		78227	CONOCOPHILIPS	52.510	168,370.04	
11/12	2,136		82051	UNITED PARCEL SVC INC	52.040	111,242.44	
11/12	12,994		82553	CLASS B	16.730	217,908.62	
11/12	3,738		86377	CISCO SYSTEMS INC	29.530	110,532.14	
11/12	4,450		86879	U S BANCORP	73.430	326,941.50	
11/12	2,136		90703	CHEVRON CORP	53.160	113,634.76	
11/12	22,606		91205	UNITED TECHNOLOGIES CORP	19.630	444,659.78	
11/12	6,052		95029	GENERAL ELECTRIC CO	30.410	184,283.32	
11/12	534		95531	VERIZON COMMUNICATIONS	337.400	180,192.60	
11/12	7,476		99355	GODDLE	29.800	223,083.60	
11/12	5,340		99857	WELLS FARGO & CO NEW	34.900	186,579.00	
11/12		50,000	19988	HEWLETT PACKARD CO	99.942		49,971.00
11/12				U S TREASURY BILL			
11/12		8,025,000	21967	DUE 12/18/2008			
11/12				U S TREASURY BILL			
11/12				DUE 2/12/2009	99.936		8,019,864.00
11/12				2/12/2009			
11/12				FIDELITY SPARTAN			
11/12				U S TREASURY MONEY MARKET			
11/12				DIV 11/12/08	DIV		69.07
11/12		69,028	17066	FIDELITY SPARTAN	1		
11/12				U S TREASURY MONEY MARKET			
11/12	41,611		26435	FIDELITY SPARTAN	1	41,611.00	
11/12				U S TREASURY MONEY MARKET			
11/12				CONTINUED ON PAGE 3			
11/12							69,028.00

3

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/19				FIDELITY SPARTAN U S TREASURY MONEY MARKET	DIV 1		5.11
11/19	575,000	41,611	51815	DIV 11/19/08 FIDELITY SPARTAN U S TREASURY MONEY MARKET	99.926	574,574.50	41,611.00
11/19			56412	U S TREASURY BILL DUE 03/26/2009			
			3/26/2009				
11/19	330		60854	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	330.00	
				NEW BALANCE		877,995.97	
				SECURITY POSITIONS	MKT PRICE		
	12,638			AET INC	28.560		
	3,382			ABBOTT LABORATORIES	52.390		
	2,314			AMGEN INC	55.540		
	1,958			APPLE INC	92.670		
	10,680			BANK OF AMERICA	16.250		
	4,450			CHEVRON CORP	79.010		
	12,994			CISCO SYSTEMS INC	16.540		
	11,570			CITI GROUP INC	8.290		
	4,272			COCA COLA CO	46.870		
	6,408			EDMCAT CORP	17.340		
				CL A			
				CONTINUED ON PAGE 4			

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York - London

RUSS SINGEL REVOCABLE
TRUST AGREEMENT

381 Third Avenue
New York, NY 10022
212 230-2121
800 331-1313
Fax 212 638-1091

Madoff Securities International Inc.
12 Bay Street
Manhatten, London W 11
E 100 2 700 6

REDACTED

1-60397-3-0

11/30/03

5

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR AC
	2133 60092 40628 74476			UNITED TECHNOLOGIES CORP VERIZON COMMUNICATIONS WAL-MART STORES INC WELLS FARGO & CO NEW MARKET VALUE OF SECURITIES LONG 8,417,538.87	48.530 32.950 35.800 28.870		

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York ☐ London

ROSE GINDEL REVOCABLE
TRUST AGREEMENT

885 Third Avenue
New York, NY 10022
(212) 230-2424
800 334-1343
Fax (212) 838-4061

Attested by
Madoff Securities International Limited
12 Berkeley Square
Mayfair, London W1J 8BJ
Tel 020 7493 6222

REDACTED

YOUR ACCOUNT NUMBER
1-60397-3-0

PERIOD ENDING
11/30/08

PAGE
6

YOUR TAX PAYER IDENTIFICATION NUMBER

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				YEAR-TO-DATE SUMMARY DIVIDENDS GROSS PROCEEDS FROM SALES			22,048.52 23,798,307.80

PERMANENT ADDRESS
 100 WALL STREET
 NEW YORK, N.Y. 10038

YOUR STOCK ACCOUNT
 YOUR ACCOUNT NUMBER

2003 Model 1 Form
 New York, N.Y. 10038
 (212) 270-1111
 100 WALL STREET
 NEW YORK, N.Y. 10038

REDACTED

1-800-977-9999

11/13/04

1

M

DATE	BUY/SELL	QUANTITY	PRICE	DESCRIPTION	MARKET PRICE	AMOUNT CREDITED TO YOUR ACCOUNT	AMOUNT DEBITED TO YOUR ACCOUNT
11/12		178	40111	5 & P 100 INDEX NOVEMBER 450 CALL	15.800	317,013.00	281,062.00
11/12		178	47443	5 & P 100 INDEX NOVEMBER 450 PUT	17.800		
11/12		178	33547	5 & P 100 INDEX DECEMBER 420 CALL	25	534,219.00	462,622.00
11/12		178	37672	5 & P 100 INDEX DECEMBER 420 PUT	20	53,578.00	
11/12		178	42197	5 & P 100 INDEX NOVEMBER 450 CALL	3		
11/12		178	46522	5 & P 100 INDEX NOVEMBER 450 PUT	37		650,422.00
				NEW BALANCE			377,996.00
				SECURITY POSITIONS			
				5 & P 100 INDEX	21.800		
				DECEMBER 420 CALL	20.800		
				5 & P 100 INDEX	20.800		
				DECEMBER 420 PUT			
				MARKET VALUE OF SECURITY			
				LONG		414,700.00	
				SHORT			

PLEASE RETAIN THIS STATEMENT FOR YOUR TAX PURPOSES.